

JUN 20 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No 97-217

Yesterday these comments were filed.
A reference and a final paragraph
were written in by hand at the
last minute. This information had
been left out of the typed copy.

These papers have that information
typed out if you would like to
substitute them.

Thank you.

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June 19, 2000

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JUN 20 2000

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Statement of Opposition to the Request for Delay In MDS/ITFS Filing Window – MM
Docket No. 97-217

Dear Ms. Salas:

Clarendon Foundation is a national filer and application submission coordinator for Instructional Television Fixed Service ("ITFS") licenses. Clarendon has been granted ITFS licenses in 13 markets and has assisted over 70 educational institutions in 20 states in applying for ITFS licenses.

Although we have been actively involved in ITFS licensing and programming since 1991, only 3 of our 13 stations have been constructed and are actually broadcasting educational programming to schools and colleges. The principal reason that our ITFS stations were not constructed by wireless operators is competition from satellite delivered subscription television programming and conventional cable. ITFS was subject to regulatory delays occasioned by the filing window procedures and extraordinarily long delays in completing the engineering review necessary to grant licenses, a process which often took more than one year. As a consequence, nearly all of the major wireless operators that had entered into airtime lease agreements with our foundation had to seek protection in bankruptcy proceedings. This valuable broadcast spectrum has been idle for over a decade.

We note that it was the policy of the FCC to encourage competition in subscription television between the three primary sources of programming for the consumer, namely conventional cable and satellite television in addition to wireless cable. In the beginning, this seemed like a good approach. In the end, wireless cable never got off of the ground because of the delays in the licensing process. Satellite television and conventional cable were not subject to licensing delays and were able to quickly establish customer bases in most areas, thereby undermining the viability of wireless cable. There is no question in our mind that further delays in licensing for two-way digital service will similarly undermine the viability of fixed wireless broadband internet and data service today, as it competes for market share with the other two principal broadband technologies: cable modems and digital subscriber line (DSL).

Since January of this year, we have been working with Sprint Corporation ("Sprint") and Nucentrix Broadband Networks, Inc. ("Nucentrix") to prepare for the opening of a filing window to seek authorization to use our ITFS channels for two-way digital service. We are planning to file two-way digital modification applications in the initial filing window for our ITFS channels in Las Vegas, Nevada; Columbus, Ohio; and Des Moines, Iowa. We are also assisting Mountain State College in Parkersburg, West Virginia, in developing a "community area network" for high speed data and internet service, which will be supported by a communications cooperative of educational institutions, businesses, and government agencies. It is our hope that this system will serve as a model for the deployment of wireless broadband services to rural communities where there is no commercial operator.

If the initial filing window is delayed, Clarendon Foundation will suffer irreparable harm to the value of our licenses and its ability to provide access to as many institutions and individuals will be reduced. As was our experience with wireless cable, once customers pay the costs of equipment and installation for one type of media delivery service, they are not likely to change to a delivery service using a new technology. Two competing technologies, cable modems and digital subscriber lines ("DSL") are signing up thousands of subscribers each day. This rapid deployment was noted by FCC Chairman Kennard in a recent speech:

"... (W)e are seeing the competitive conditions develop for a truly competitive broadband environment. The most exciting thing that is happening is this competition emerging between the telephone companies rolling out their broadband product, DSL, and the cable companies simultaneously rolling out their broadband product, the cable modem. And it is just beginning. At the beginning of 1998 there were 50,000 cable modems in service in America. At the end of 1998 there were 500,000 – a ten-fold increase. At the middle of this year, there were a million. By the end of this year there are predictions that there will be a million and half to two million cable modems in service.

"And on the telephone side, on the DSL side, we are seeing some real interesting growth in DSL service. The telephone companies are starting to deploy it much more aggressively. Between the end of March and the end of June of this year the number of DSL lines doubled to nearly 200,000 and it is expected to double again by the end of the year. And this pickup in growth is a function of one thing: competition. The regional Bell companies know that for the first time in the history of this country they are facing a serious, facilities-based competitor in their backyard: the residential marketplace. And that is the cable television industry. And it is the prospect of that competition that is going to really jumpstart broadband deployment in this country.

"But we should not stop there. Two pipes are not enough. We want to see multiple broadband pipes. I am convinced that we will have a wireless broadband pipe. The wireless companies are starting to show up at the broadband party. They now need the spectrum that will allow them to do high speed Internet access over a wireless platform.

"And the broadcast industry, which recently received from Congress 6 MHz of spectrum for digital television, can also use it to deploy broadband to create yet another terrestrial wireless broadband platform.

“And the satellite industry, as many of you know, is starting to roll out broadband offerings as well.

“It is exciting for the industry; it is exciting for consumers.

“The challenge for us is to make sure we are creating a regulatory environment that is **technology neutral** so we get as many players on the field as possible. And then things get very interesting and very good for consumers.” [Emphasis supplied.]

[Consumer Choice Through Competition, Remarks by William E. Kennard, Chairman, Federal Communications Commission, at the National Association of Telecommunications Officers and Advisors, 19th Annual Conference, Atlanta, Georgia, September 17, 1999]

We maintain that the FCC would not be **technology neutral** if the initial filing window is delayed at a time when competing technologies already have such a large head start. Moreover, the FCC has made regulatory decisions to assist the deployment of broadband services in the cable modem and DSL technologies. As FCC Chairman Kennard recently observed:

“This competitive, market-driven approach is the same strategy that we should take in building the broadband networks of the next century.... Here is my vision for broadband in America. Multiple broadband pipes serving America's homes. At least four or five facilities-based competitors. Digital Subscriber Line (DSL), cable modem, terrestrial wireless, and satellite.

“That's my vision for our broadband future. Because that is the best way to serve America's consumers. Multiple facilities-based carriers, competing robustly to bring all sorts of wonderful content to America's homes....

“The broadband market is fertile, but still undeveloped. The future is bright, but still glimmering in the distance. We are about 50 meters into a race that is sure to be a marathon.

“Sometimes people talk about broadband as though it is a mature industry. But, the fact is that we don't have a duopoly in broadband. We don't even have a monopoly in broadband. We have a NO-opoly. Because, the fact is, most Americans don't even have broadband.

“We have to get these pipes built.

“But how do we do it? We let the marketplace do it....

“So with competition and deregulation as our touchstones, the FCC has taken a hands-off, deregulatory approach to the broadband market. We approved the AT&T-TCI deal without imposing conditions that they open their network....

“Wireless companies like Motorola and Nextel have announced partnerships with other firms; satellite companies like DirectTV, Lockheed Martin, and TRW have made moves to provide broadband through their technology; and DSL providers have entered into deals with Prodigy, AOL, and Microsoft.

“And where cable modem service has been introduced, DSL is following. To spur on this competition, we gave fast-track approval to allow Bell Atlantic to offer bulk discounts on DSL service to large ISPs like Prodigy and AOL.

“The competitive fires are burning. The market has a degree of certainty, and investment dollars have followed.”

[“The Road Not Taken: Building a Broadband Future for America,” Remarks of Federal Communications Commission, before the National Cable Television Association, Chicago, Illinois, June 15, 1999]

To foster a truly competitive environment for the roll out of broadband data and internet services, Clarendon Foundation urges the FCC to open the filing window for modifications to provide two-way digital service, as scheduled. Chairman Kennard has recognized the need for fast deployment of broadband internet and data services. In a recent speech, he stated:

“We all want to foster a regulatory environment that will maximize consumer welfare. It will be the best thing for all of our consumers. Fundamentally, we want four things for consumers in the broadband world. We want fast deployment. We want ubiquitous deployment. We want competitive deployment. And we want open deployment.

“Fast Deployment. Our challenge today is to make broadband happen and make it happen fast. We want to bring high speed Internet access to every home in America. The demand is there. Americans want it. If we can get it there, it will open up a whole new horizon for electronic commerce in this country.”

[Consumer Choice Through Competition, Remarks by William E. Kennard, Chairman, Federal Communications Commission, at the National Association of Telecommunications Officers and Advisors, 19th Annual Conference, Atlanta, Georgia, September 17, 1999]

If a decision is made to delay the opening of the initial filing window, then we would urge the FCC to allow operators and institutions that are ready to file to request experimental licenses as provided for in Title 47 of the Code of Federal Regulations, section 73.1510. The purpose of the experimental license would be to gather data from actual operation of two-way digital broadband transmission facilities to be used in the validation and refinement of the engineering software. The operators of the experimental stations could be required to allow engineering firms and other operators to take measurements. The resulting data could be delivered to the FCC which could make it available to the public. This, in our opinion, would be a way to accommodate the interests of all parties. Such real world validation could significantly advance the schedule for “perfecting” the software, and lead to more accurate predictions.

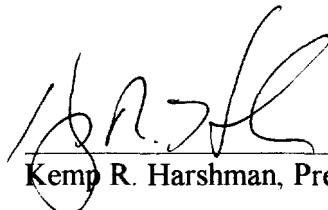
In this respect, it must be kept in mind that the engineering software is only a model of expected interference patterns and it is highly unlikely that it could ever be made absolutely “perfect.” There is bound to be a certain amount of “fits and starts” in rolling out any new technology. There will inevitably be problems in engineering and deployment of fixed wireless systems, as a new technology, regardless of when the initial filing window is scheduled.

Finally, to address the concern of ITFS 2020 about loss of priority by not filing in the initial window, we urge the FCC to adopt a policy of considering all modifications for licenses in effect at the time of the opening of the initial window to be "filed concurrently" regardless of when the application is submitted. This will remove the strategic advantage of filing in the initial window.

Respectfully submitted,

CLARENDON FOUNDATION

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